IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

-

WRIT PETITION NO.15820 of 2004

Between:

JP Print Systems Pvt., Ltd.,

113, Nilgiri Block, Aditya Enclave,
Ameerpet, Hyderabad -500 038

rep. by its Managing Director

Sri Mathews Peter,S/o.Late Sri R.Peter,

R/o. Plot No.33-C, MLA's Colony,

Road No.12, Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 Director/Secretary Board of Intermediate Education,
Government of Andhra Pradesh, Nampally, Hyderabad.
2 Principal Secretary, Higher Education Department,
Government of Andhra Pradesh,
Secretariat Building, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction more particularly in the nature of writ of Mandamus, declaring the in action of the Respondent in processing the bill Invoice No.715 dated 18.12.2003 submitted by the petitioner as illegal and arbitrary and direct the

respondents to process the same and pay the bill amount to the petitioner.

Counsel for the Petitioner:MR.M.VIJAYA SARATHI REDDY

Counsel for the Respondents: GP FOR HIGHER EDUCATION

The Court at the stage of admission made the following ORDER:

Pursuant to the purchase order made by the Commissioner of Intermediate Education in his letter dated 28-01-2003 for supply of J.P.s EAMCET study material i.e. two sets of English Medium and two sets of Telugu Medium, to the District Vocational Education Officers and Regional Inspecting Officers in the State as per annexure and as per the rates accepted by the petitioner in its letter dated 11-01-2003, the petitioner claims to have supplied the materials. According to the petitioner, so far as English version is concerned, it supplied the same well within the time stipulated and accordingly, submitted the relatable bills, which were also cleared by the respondents. So far as Telugu version is concerned, the same could not be supplied within the time limit. In view of the same, the first respondent-Director/Secretary, Board of Intermediate Education, Government of Andhra Pradesh, Hyderabad, through his letter dated 28.10.2003, called upon the petitioner to submit a status report in supplying J.P's EAMCET study material of Telugu medium and also the reasons for the delay in supplying the same. Pursuant to the same, the petitioner through its letter dated 03-11-2003 assured the first respondent to supply the Telugu version study material positively by 15th November, 2003. According to it, the delay was caused in the process of translating the study material. As per the undertaking given by the petitioner in its letter dated 03-11-2003, it supplied the Telugu version study material and the same was accepted by the respondents without any protest. On such acceptance, petitioner submitted relatable bill No.715 for a sum of Rs.7,80,850/-. Since the same has not been cleared by the respondents, the petitioner went on making representations for clearance of the same. Since the same has not yet been cleared by the respondents,

petitioner moved this Court by way of filing the present writ petition contending that on making a representation to the respondents by it for clearance of the bill, a letter dated
29-06-2004 was addressed by the Joint Director, Board of Intermediate Education for clarification whether the material supplied in November, 2003 was prepared for May, 2003 or May, 2004 EAMCET examinations but in the purchase order, the first respondent has not stated that the material should be supplied for EAMCET, 2003 examination. Even the material, which was supplied, was admittedly being accepted and utilized and then only, offered their letter dated 29-06-2004 to it and was requested to explore the possibility in reduction of the cost of the material to atleast 1/3rd of the agreed rate of processing bill. It has replied promptly through its letter dated 06-07-2004 stating that it has offered already 50% discount to the bill and there is no scope for offering further discount and requested for payment of the bill amount. In spite of the same, they have not paid the said amount and the same is arbitrary and illegal.

The respondents in their counter stated that in pursuance of their purchase order, petitioner supplied only English medium study material for EAMCET, 2003 and did not supply the study material for Telugu medium, which is essential to be supplied in mofussil areas, where more number of Telugu medium students are in existence and as the study material of Telugu version has not been supplied within the stipulated time i.e.15 days from the purchase order, they had addressed a letter to the petitioner to give a status report with regard to the supply of J.P.s EAMCET study material of Telugu medium and due reasons for non supply, if not already supplied. Petitioner without giving any reasons for non-supply of the material, supplied the Telugu medium material to the colleges on 15-11-2003 though there is no direction to it to supply the books after the time stipulated. Therefore, the respondents are not liable to pay any amount towards supply of books, which are supplied beyond stipulated time.

It is admitted that the letter dated 29-06-2004, which contains clarification, addressed to the petitioner certainly to lessen the hardship of the respondents and without submitting any reply to the said letter, petitioner rushed to the Court for payment of amount alleging non-payment of amount for the books supplied and for the alleged amount, it has to approach the civil court, if any.

Heard the learned counsel for the petitioner and the learned Government Pleader for Higher Education appearing for the respondents at length.

Learned counsel for the petitioner rightly submitted that the respondents never entrusted the supply of material only for EAMCET, 2003 but even after EAMCET 2003, they have called upon the petitioner to supply the material and reasons for the delay and the same was explained in its letter dated 03-11-2003 undertaking to supply the material by 15th November, 2003 and accordingly, the material was supplied. Further, the letter written by the respondents dated 29-06-2004 clearly indicates that they have accepted the material and requested for reduction of cost of the material from 50% to 1/3rd of the agreed rate and the petitioner had already given reply to it. In view of the same, the respondents are under an obligation to process the bill. Merely because it is a contract, the respondents cannot deny the amounts taking the plea that the petitioner has to approach the civil court in the light of the law declared by this Court in ***ABL INTERNATIONAL LIMITED AND ANOTHER v. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LIMITED AND OTHERS*** and relying upon the division bench judgment of this Court in ***G.RAJENDER REDDY AND COMPANY v. GOVERNMENT OF A.P., R&B DEPARTMENT AND OTHERS***.

On the other hand, the learned Government Pleader for Higher Education appearing for the respondents contends that the purchase order raised on 28-10-2003 and the petitioner was called upon to supply the material within 15 days whereas it has supplied only English version of the study material and has not supplied the Telugu version of the study material. When the petitioner was called upon to explain the reasons for non-supplying on 28-10-2003, the petitioner in spite of submitting the reasons, agreed to supply the material by 15th November, 2003 and accordingly supplied the same. Thereafter, the petitioner was called upon through letter dated 29-06-2004 to explain whether the material served the students appeared for EAMCET for May, 2003 and May, 2004 and without giving any reply to the same, the petitioner rushed to this Court for payment of the amount, which is in contractual nature and a writ cannot be maintained.

The petitioner specifically averred in the writ petition that on 06-07-2004, it had given reply to the letter sent by the respondents dated 29-06-2004 stating that the study material being the standard material, the question of demarcating it for a particular

year does not arise and it can be availed for any EAMCET examination and therefore, it ensure the benefit for EAMCET, 2003 and 2004 and beyond also. In view of the same, it is not possible to accede the request of the respondents for reduction of the cost of the material to 1/3rd since it had already offered 50% discount in the bill dated 18-12-2003 and there is no scope for any further discount. The same has not been denied by the respondents in their counter. Only for reference, the said letter dated
06-07-2004 was filed along with the writ petition.

The Supreme Court in (1) supra categorically held as follows:

> *"Where disputed questions of fact pertaining to the interpretation/meaning of documents or part(s) thereof are involved, the courts can very well go into the same and decide the objections if facts permit. Moreover, merely because one of the parties wants to dispute the meaning of a document or part thereof would not make it a disputed fact."*

It is evident from the material papers filed along with the pleadings as well as the documents made available along with the writ petition that even after expiry of 15 days period, the petitioner was called upon the reasons for non-supply of Telugu medium study material in two sets and whereas it was undertaken to supply the same by 15th of November and accordingly, supplied the material. The same was accepted and used by the respondents, which is evident from their letter dated 29-06-2004, whereunder, they have requested only for reduction of the cost of the material. Even in the counter filed by the respondents, they have not denied the liability to pay the amounts due under the bill but it is stated that the clarification was sought in the letter dated 29-06-2004 only to lessen their hardship and the petitioner without sending any reply to the said letter, rushed to the Court alleging that payment is not made for the bill supplied and for which, the petitioner has to approach the civil court for recovery of the amount and stating that the petitioner's act of giving huge discount is only a business tactics and not a mark of commitment for improving business in government junior colleges. Since the respondents have not been denying the claim of the petitioner, it cannot be a disputed amount and the petitioner cannot be relegated to file a civil suit as was done in (1) supra.

In view of the law declared by the Apex Court in (1) supra, the division bench of this Court in (2) supra, categorically held that after interpreting the terms and conditions of the contract as amended in Detailed Standard Specifications, the suit can be filed only after intimation is received by the contractor from the Government and the inaction on the part of the respondents Government can only be questioned by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and for the said relief, the writ is maintainable.

In view of the same, the respondents are hereby directed to process the final bill vide invoice No.715, dated 18-12-2003 submitted by the petitioner for payment of the amount within a period of four weeks from the date of receipt of a copy of this order and on such finalisation, whatever the amount is due, has to be paid. It is needless to say that if any bill is due to the petitioner, the same shall be paid.

The writ petition is accordingly allowed. No costs.

5th NOVEMBER, 2004.

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To

1 The Director/Secretary Board of Intermediate Education,
Government of Andhra Pradesh, Nampally, Hyderabad.
2 The Principal Secretary, Higher Education Department,
Government of Andhra Pradesh, Secretariat Building, Hyderabad.

3 Two CCs to the Government Pleader for Higher Education, A.P.High Court Buildings, Hyderabad (OUT).

4 Two CD copies.